

THE STATE OF TEXAS       §  
COUNTY OF HARRIS       §

**THEATER LICENSE AGREEMENT  
STANDARD TERMS AND CONDITIONS**

1.     **DEFINITIONS.** When used herein, capitalized terms have the meaning ascribed to them in the License Agreement to which these Standard Terms and Conditions are attached and form a part.

2.     **CONDITION OF THE PREMISES.**

(a)     The City makes no warranty or representation to Licensee of any kind (express or implied) regarding the suitability of the Premises, or any portion thereof, as built, for any aspect of the use Licensee expects or intends to make of the Premises. The Premises are offered by the City and accepted by the Licensee in their current conditions, on an "**AS IS**" basis, and Licensee hereby waives any claims against the City for defects in the Premises, including latent defects. Licensee agrees that it has examined the Premises and is satisfied with the condition, fitness and order thereof. Commencement of the use of the Premises shall be conclusive that the Premises were in good repair and in satisfactory condition, fitness, and order when such use commenced. **LICENSEE FURTHER AGREES THAT THE PREMISES SHALL BE DELIVERED BY THE CITY TO LICENSEE "AS IS," "WHERE IS" AND "WITH ANY AND ALL FAULTS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR THE USE THEREOF FOR ANY PARTICULAR PURPOSE.**

(b)     Upon the end of the License Period and any Additional Time, Licensee shall vacate the Premises and surrender same to the City in broom-clean condition, excepting damage due to ordinary wear and tear, fire, the elements, a Force Majeure, or any other cause not occasioned by the negligence or intentional act of the Licensee. Licensee shall remove from the Premises any goods or chattels brought or permitted by it on the Premises. For non-compliance with the provisions of this Section, Licensee shall pay to the City as liquidated damages and not as a penalty (both parties hereto agreeing that damages from such a holding over are difficult to ascertain) for each day or portion thereof during which the Premises are not surrendered or such goods or chattels are not removed a sum equal to 150% of the rental amount for an Event day or, at the City's option, the City may remove all goods and chattels and store same at Licensee's expense. The City may dispose of any such property, if after the expiration of thirty (30) days, the Licensee has failed to remove the property from the possession of the City. The City shall not be liable to the Licensee on account of so removing, storing, or disposing of Licensee's property as provided by this Section.

Either party (upon reasonable notice) shall be entitled to request a mutual inspection of the Premises before and/or after the License Period, together with an inspection report signed both by the Licensee or his agent and the Director or her designee.

3.     **UTILITIES.**

(a)     The License Fee includes normal, reasonable lighting, electricity, water, sewer, gas, heating and air conditioning, which is affixed to and serves the Premises during the License Period. Energy conservation is a prime concern to the Department and minimal light and comfort levels will be maintained during move-in and move-out periods.

The required lights will be turned on and doors unlocked at 8:00 a.m. and will be turned off and locked as required by Licensee during the License Period.

(b)     Licensee shall, at its own cost and expense, pay for all long distance telephone charges incurred while in the Premises in connection with the Event and shall save and hold the City harmless from any charge or liability therefor.

(c)     No interruption or malfunction of any utility services, whether such services are provided by the City or arranged for by Licensee, shall constitute an eviction or disturbance of Licensee's use and possession of the Premises or breach by the City of any of its obligations hereunder or render the City liable for damages or entitle Licensee to be relieved from any of its obligations hereunder. In the event of any such interruption of any such services, the City shall be obligated only to use reasonable diligence to restore such service in any circumstance in which such interruption is caused by the City's fault.

#### **4. CONTRACT AND DAMAGE DEPOSIT.**

(a) The Licensee shall not without the consent of the Director cause or permit any nails or other items to be driven into any portion of the Premises, except for theatrical purposes in backstage areas, nor any signs affixed either to the exterior thereof, nor cause or permit any changes, alterations, repairs, painting or staining of any part of the Premises or the furnishings or equipment thereof, nor do, nor permit to be done, anything which will damage or change the finish or appearance of the Premises or the furnishings thereof. The Licensee shall pay the cost of repairing injury and damage to the Premises, its equipment, fixtures and furnishings to the condition found before the Event, caused by the act or failure to act of the Licensee, the Licensee's employees, or agents or anyone visiting the Premises at the invitation of the Licensee. The Director is authorized to settle on behalf of the City any City claim for damages to the Premises, its equipment, fixtures or furnishings amounting to \$5,000.00 or less.

(b) The City may deduct from the Deposit the cost of any repair, removal, replacement or Additional Time or other charges described in this Agreement and the remainder of which the Director shall return to the Licensee. The failure on the part of the Director to require such Deposit shall not affect the unconditional liability of the Licensee to pay the cost of the repair, removal, replacement or Additional Time as provided in this Agreement. Further, the Deposit shall not constitute a limitation on the Licensee's liability under this Section or a waiver of the City's right to recover from the Licensee the difference between the Licensee's liability under this Section and the amount of its Deposit.

**5. RELEASE. LICENSEE, ITS PREDECESSORS, SUCCESSORS AND ASSIGNS HEREBY RELEASES, RELINQUISHES AND DISCHARGES THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS FROM ANY LIABILITY RESULTING FROM THE SOLE AND/OR CONCURRENT NEGLIGENCE OF THE CITY OF HOUSTON FOR ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR PROPERTY WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH OR ARISING OUT OF THIS LICENSE AGREEMENT.**

**6. INDEMNITY. LICENSEE AGREES THAT IT WILL PROTECT, DEFEND, INDEMNIFY AND HOLD AND SAVE THE CITY (AND IN THE CASE OF WORTHAM THEATER, WORTHAM CENTER OPERATING COMPANY) HARMLESS OF, FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LOSS, COST, LIABILITIES, EXPENSES, AND JUDGMENTS RECOVERED FROM OR ASSERTED AGAINST THE CITY ON ACCOUNT OF INJURY OR DAMAGE TO PERSON OR PROPERTY, INCLUDING WITHOUT ANY LIMITATION, BY REASON OF COPYRIGHT INFRINGEMENT, TO THE EXTENT THAT ANY SUCH DAMAGE OR INJURY MAY BE INCIDENT TO, ARISE OUT OF, OR BE CAUSED, EITHER PROXIMATELY OR REMOTELY, WHOLLY OR IN PART, BY AN ACT, OMISSION, NEGLIGENCE, OR MISCONDUCT ON THE PART OF LICENSEE OR ANY OF ITS AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, PATRONS, GUESTS, LICENSEES, OR INVITEES OR OF ANY OTHER PERSON ENTERING UPON THE PREMISES WITH THE EXPRESS OR IMPLIED INVITATION OR PERMISSION OF LICENSEE, OR WHEN ANY SUCH INJURY OR DAMAGE IS THE RESULT, PROXIMATE OR REMOTE, OF THE VIOLATION BY LICENSEE OR ANY OF ITS AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, PATRONS, GUESTS, LICENSEES, OR INVITEES OF THE PREMISES. SUCH INDEMNIFICATION OF THE CITY BY LICENSEE SHALL BE EFFECTIVE UNLESS SUCH DAMAGE OR INJURY MAY RESULT FROM THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF THE CITY.**

**UPON THE FILING BY ANYONE OF ANY TYPE OF CLAIM, CAUSE OF ACTION, OR LAWSUIT AGAINST THE CITY FOR ANY TYPE OF DAMAGES ARISING OUT OF INCIDENTS FOR WHICH LICENSEE OR ITS INSURER MAY BE LIABLE PURSUANT TO THE PRECEDING PARAGRAPH, THE CITY SHALL NOTIFY LICENSEE OF SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT. IN THE EVENT THAT LICENSEE OR ITS INSURER DOES NOT SETTLE OR COMPROMISE SUCH CLAIM, CAUSE OF ACTION, OR LAWSUIT AT ITS OWN COST, THEN LICENSEE OR ITS INSURER SHALL UNDERTAKE THE LEGAL DEFENSE OF SUCH CLAIM, CAUSE OF ACTION, OR LAWSUIT AT ITS OWN COST BOTH ON BEHALF OF ITSELF AND ON BEHALF OF CITY UNTIL FINAL DISPOSITION, INCLUDING ALL APPEALS. THE CITY MAY PARTICIPATE IN THE LEGAL DEFENSE OF ANY SUCH CLAIM, CAUSE OF ACTION, OR LAWSUIT AND IN THE SELECTION OF COUNSEL BY LICENSEE TO DEFEND AGAINST SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT. ANY FINAL JUDGMENT RENDERED AGAINST CITY FOR ANY CAUSE FOR WHICH LICENSEE IS LIABLE HEREUNDER SHALL BE CONCLUSIVE AGAINST LICENSEE AS TO LIABILITY AND AMOUNT UPON THE EXPIRATION OF THE TIME FOR ALL APPEALS.**

**NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE LICENSEE UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$500,000 PER OCCURRENCE.**

**7. SUBCONTRACTOR'S INDEMNITY. LICENSEE SHALL REQUIRE ALL OF ITS CONTRACTORS OR SUBCONTRACTORS TO INCLUDE IN THEIR CONTRACTS OR SUBCONTRACTS A RELEASE AND INDEMNITY IN FAVOR OF THE CITY IN SUBSTANTIALLY THE SAME FORM AS ABOVE.**

**8. COPYRIGHT LAW COMPLIANCE; REPRODUCTION.**

(a) **Copyright Law.** Licensee warrants that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives. Licensee, its employees, contractors, and agents shall assume full responsibility for complying with the federal copyright laws and any regulations issued thereunder and the laws of unfair competition, including but not limited to payment of royalties which are due for the use of copyrighted works during Licensee's Events.

(b) **Reproduction.** The Director may, by separate written agreement between the parties, grant to Licensee the right to make, license or permit others to make films, cassettes, phonos, discs, motion pictures, tape or other records, and live and delayed radio or television broadcasts of (i) the Event and any part thereof and (ii) the Premises and any decoration, furnishings or equipment placed or maintained therein by City or otherwise. Licensee shall not itself nor permit others to perform commercial photography without the prior written consent of the Director.

**9. PERSONNEL, EQUIPMENT, TICKETS, EXCLUSIVE SERVICES AND MERCHANDISING.**

(a) **Personnel.** The Licensee shall at its sole expense furnish the following:

1. Security (in addition to the security personnel provided by the City) as described in Section 5.C. of the Theater District Rules and Regulations; and
2. Ticket sellers, Ticket takers, doormen, ushers, seating directors, stagehands, and other personnel in numbers sufficient to produce the Event in an orderly, safe, and professional manner, in accordance with Section 14 of the Theater District Rules and Regulations; and
3. First aid personnel and equipment as described in Section 5.A. of the Theater District Rules and Regulations; and
4. Personnel in both numbers and qualifications and services necessary to ensure the provisions of the Americans with Disabilities Act are met, as described in Section 22 herein.

(b) **Equipment.** Licensee may use so much of the following equipment as is available and as is necessary in the opinion of Licensee and available for use for the Event: stage, lighting, microphones, house sound system, spotlights and normal stage decoration. The use of such equipment is included in the License Fee.

(c) **Tickets.** Licensee shall adhere to the following rules governing Tickets:

1. Designated box office space is available during the License Period at no additional charge. Usage outside the License Period, if available, will be at rates as determined by the Director; and
2. Licensee may reserve complimentary Tickets for its own use or the use of its designees, but no more than 200 complimentary Tickets per Event without the Director's approval; and
3. The City reserves the right to audit the Ticket manifest; and
4. A list of local ticket service providers may be supplied upon request; and
5. All tickets must be printed through an authorized ticketing agency and a copy of the ticket manifest shall be provided to the Director.

(d) **Exclusive Services.** The City shall have the exclusive right to provide Licensee with those services that are outlined in the Department's Theater District Rules and Regulations, such as the sale of alcoholic beverages and food and beverage concession sales.

(e) **Merchandising.** Any items that are solely related to Licensee's Event and that are not considered exclusive services by the Director, such as the sale of alcoholic beverages, may be sold by the Licensee or its exhibitors upon the prior consent of the Director or as may be provided by separate agreement. Licensee shall comply with the Department's Rules and Regulations governing merchandising.

## **10. PREMISES.**

Licensee shall use the Premises and other parts of the Facility affected by the Event in the following manner and in accordance with the following rules:

(a) **Use of the Premises.** Licensee may not use the Premises or permit any part of the Facility to be used for any purpose other than in conjunction with the Event and shall not permit its use for lodging, in conflict with any law, ordinance, rule or regulation of any governmental authorities, in any manner which would violate the provisions of insurance coverage on or related to the Facility, or increase the rate of insurance, in any manner which constitutes waste or nuisance, or in any manner which causes or threatens to cause damage or injury to the Facility or alteration to all or any portion of the Facility.

(b) **Preparation of the Premises.** With the exception of the exclusive services set forth in 9(d) above, Licensee shall, subject to the Director's approval, provide and install all other equipment, furniture and effects of every description and provide such personnel, labor and materials as is necessary or appropriate for Licensee's use of the Premises for the Event. The Director's approval of Licensee's personnel, labor, equipment or material shall constitute a license authorizing Licensee to permit such labor, personnel, materials or equipment to enter the Facility; however, the continued effectiveness of such license is conditioned upon Licensee's personnel and labor working in harmony with and not interfering with the personnel and labor of the City and is further conditioned upon Licensee's compliance with the terms and provisions of this Agreement. Accordingly, if at any time Licensee's personnel or labor shall cause disharmony or interference with another event or shall violate the terms and provisions of this Agreement, then the license to allow such labor, personnel, materials and equipment in the Facility may be withdrawn by the Director or Licensee shall cause all such personnel, labor, material and equipment to which the Director objects to be removed from the Facility.

(c) **Sharing of Services and Facilities (For Wortham Theater Center only).** Licensee acknowledges that the Facility may or will be used for the installation, holding or presentation and removal of activities, events, and engagements other than Licensee's Event. In an effort to ensure the success of every event in the Facility, the City agrees to notify the Licensee of other events taking place in the Facility simultaneously with its Event. Licensee understands and agrees that if the sound or vibration generated by the Event adversely affects another event in the Facility, Licensee shall make any necessary volume or other adjustment that the Facility management deems necessary to resolve the interference. Alternatively, Licensee agrees that the City may take such action required to resolve the interference if Licensee fails to resolve the problem in a reasonable period of time.

Licensee further acknowledges that in order for the Facility to operate as efficiently as practicable it may be necessary to coordinate or share certain Facility services and equipment including without limitation, entrances, exits, docks, receiving areas, marshaling areas, storage areas, passenger and freight elevators, lobbies, parking garages, box office, and concession areas. Licensee agrees to comply with the Department's Rules and Regulations on the subject. If a situation arises that is not addressed in the Rules and Regulations, Licensee agrees that the Director shall have full authority to establish the schedules for the use and availability of such services and facilities and to determine when, and the extent to which, the sharing of any such services and facilities is necessary or desirable.

Licensee, its contractors, exhibitors, employees and attendees may not obstruct or interfere with the occupancy of other licensees in the Facility, or in any way injure or annoy other licensees, their events or patrons. Licensee shall comply with any schedules so established and shall cooperate in any sharing arrangements so determined, including making any necessary sound volume adjustments or such alternate arrangements the Director deems necessary. In no event shall Licensee enter or use any area, part, or service of the Facility, other than the Premises, without first obtaining the Director's consent and approval other than ingress or egress to Fish Plaza or the Grand Foyer in the case of Wortham Theater.

(d) **Alterations, Signs, etc.** Licensee shall not mark, paint, drill into or in any way mar or deface any part of the Premises or the Facility, except on stage if necessary for theatrical purposes. Licensee shall not hang, affix or erect any lettering, signs, pictures, notices or advertisements upon any part of the outside or inside of the Facility or make any alterations or improvements in or to the Premises or the Facility without the prior written consent of the Director. Licensee

shall comply with the Department's Rules and Regulations governing Prevention of Facility Damage and Disfigurement and the Rules and Regulations governing Sign Hanging and Ceiling Rigging.

(e) **Rules and Regulations--attached.** Licensee shall, and shall cause its servants, agents, employees, licensees, and invitees to abide by the Department's Theater District Rules and Regulations governing the use, occupancy and operation of the Premises and the Facility.

(f) **Access and Announcements.** The City, its officers, directors, servants, employees, agents, concessionaires and its concessionaire's servants, employees and agents, shall at all times have free access to the Facility to perform their job functions. The City reserves and retains the right to use and may use the sound system for emergency purposes and display advertising in the Facility in any manner, which in the Director's conclusive opinion is desirable or appropriate, provided that such announcements, descriptions, advertisements and use do not substantially disrupt or interfere with the Event.

(g) **Persons Appearing.** Licensee shall be solely responsible for the conduct and activities of persons participating in the Event and for such purposes of this Agreement the conduct and activities of such persons shall be deemed to be the conduct and activities of the Licensee.

(h) **Use of the Facility Name.** Licensee shall not circulate, publish or cause to be circulated or published advertisement, ticket, placard, or other written or printed matter, or any photograph, motion picture, television, tape recording or other similar matter wherein the Event, image of the Facility, the City's name or the name of the Facility is mentioned or referred to without an executed contract.

(i) **Ancillary Rights.** The City reserves and retains to itself and its assignees, licensees and designees the privilege of using such parts of the Facility as in its opinion, which shall be conclusive, are necessary for or to the operation and maintenance of the Facility.

(j) **Number of Attendees.** Licensee shall not admit to the Premises a larger number of persons than can safely and freely move about in the Premises, as approved by the Fire Marshal; and the decision of the Fire Marshal in this respect shall be final. Licensee's floor plans are subject to the City's Fire Marshal's review and approval.

(k) **Animals.** No live animal, reptile, fish or bird is allowed in the Facility, unless proper precautions have been made to control and restrain such animal, fish or bird, and for which written permission has been provided by the Director. All requests to bring animals into the Facility for exhibit or display purposes must be received by the Director, in writing, no less than thirty (30) days prior to the beginning of the License Period. Guide dogs are permissible.

(l) **Catering-Food and Beverage.** Food and beverage services are controlled and operated by the Facility. Licensee understands and agrees that the City has a contract with a food and beverage provider. That contract is currently with a joint venture between Aramark Sports & Entertainment Services of Texas, Inc. and Quality Concession Foods, Inc. to provide on-premise food and beverage services for the Department's facilities. In accordance with the contract, alcoholic beverages may be sold only by Aramark at the Facility since they are the preferred caterer and have a TABC license to sell alcohol. Licensee may only utilize a caterer other than the joint venture set forth above to provide food and beverage services during Licensee's Event, if Licensee and the third-party caterer execute Aramark's buy-out agreement before the Event, which agreement shall constitute a supplement to this Agreement.

The buy-out agreement provides that Licensee shall pay Aramark 25% of the amount that it would cost for Aramark to cater the same menu as the third-party caterer will provide. For purposes of this provision, the Department's Contract for Event Catering Services and an example of the buy-out agreement are maintained in the office of the Director and are incorporated herein by reference for all purposes.

**11. RIGHT OF ENTRY.** The Director shall have the right at any time to enter any portion of the Premises or the Facility for any purpose whatsoever and the Facility and the Premises shall at all times be under the charge and control of the Director. The Director shall retain possession of the keys to the Premises and the Facility, but during the License Period, certain entrances and exits shall be locked or unlocked at the direction of the Licensee.

**12. RIGHT TO REMOVE OBJECTIONABLE PERSONS.** The City reserves the right to control all personnel, including, but not limited to, ushers, Ticket sellers, Ticket takers, security personnel and all other employees, contractors,

and invitees of the Licensee, and the Director may remove from the Premises any employees, agents, contractors or invitees of the Licensee and has the right to eject any objectionable person or persons from the Premises and the Facility.

**13. FORCE MAJEURE.** Force Majeure shall include, but not be limited to, acts of God, acts of the public enemy, war, blockades, insurrections, strikes, lockouts, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests and restraints of governments and people, explosion, and other occurrences or conditions of like nature.

If either party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such Force Majeure as soon as practicable to the other party, but no later than seven (7) days after the occurrence of the cause relied upon, the obligations of the party giving such notice, to the extent it is affected by Force Majeure, shall be suspended during the continuance of the Force Majeure.

If a Force Majeure causes the License Period to be canceled in whole or in part, and the affected party complies with this section regarding notice, the Licensee shall owe the City a License Fee based on the time period (if any) during which the Licensee had reasonable commercial use of the Premises.

**14. CANCELLATION BY LICENSEE.** This Agreement is canceled on the date that the Director receives Licensee's written notification of cancellation (the "Date of Cancellation"). If the Licensee cancels this Agreement, Licensee is entitled to a refund of the License Fee for each definite date that the Director resells. If the Director is unable to resell a definite date previously held by the Licensee hereunder, the Licensee shall owe the City a percentage of the License Fee for each such definite date. Licensee and the City agree that Licensee's cancellation of the Event will cause damages to the City and that the actual damages from the harm are difficult to estimate accurately. Therefore, Licensee and the City agree that the Licensee shall be liable for and shall pay to the City an amount, as calculated below, for each such definite date not resold as liquidated damages and that the amount calculated, using the formula below, is a reasonable forecast of just compensation for the harm to the City resulting from Licensee's cancellation of the Event.

If the Cancellation Date is "X" calendar days prior to the definite date that could not be resold, then the Licensee shall owe to the City "Y" percent of the License Fee for the definite date that could not be resold. "X" and "Y" are determined as follows:

In the above sentences:

If "X" equals 1095 to 731 calendar days, then "Y" equals 15%;  
If "X" equals 730 to 541 calendar days, then "Y" equals 25%;  
If "X" equals 540 to 366 calendar days, then "Y" equals 50%;  
If "X" equals 365 to 181 calendar days, then "Y" equals 75%;  
If "X" equals 180 to 90 calendar days, then "Y" equals 85%;  
If "X" equals 89 to 0 calendar days, then "Y" equals 100%;

However, if the Director is able to resell all or a portion of Licensee's definite date(s), then Licensee shall be entitled to a refund of the License Fee based upon the following:

- a) Partial Refund - if the Director resells the date(s) at a lower rate or is unable to resell all of the Licensee's dates or space.
- b) Full Refund - if the Director sells all of Licensee's dates and space at equivalent or higher rates.

The Director is authorized to retain all or a portion of the License Fee and Deposit to reimburse the City the sum owed pursuant to this Section, and the Licensee shall pay the balance of such sum owed to the City, if any, within thirty (30) days following receipt of written notice from the Director.

No refund will be made to the Licensee if the Licensee does not use all of the space or time contracted pursuant to this Agreement or for the purpose described in this Agreement.

**15. TERMINATION BY THE CITY.**

(a) The Director may terminate this Agreement in accordance with the provisions of Chapter 12 and the Department's Rules and Regulations in the event that Licensee fails to timely take any action that is necessary to become a Licensee (including, but not limited to, payment of the License Fee, Deposit or the furnishing of documentation evidencing insurance coverages) or fails to observe any of the terms of this Agreement including the Standard Terms and Conditions.

(b) The Director shall terminate this Agreement if the Event has been declared obscene within the community of Houston, Texas, by a court of competent jurisdiction.

(c) The Director may terminate this Agreement or order an Event closed if injury or damage to either the Facility, the Licensee, other licensees of the Facility, or any patrons of events in the Facility is, or is believed to be, imminent.

(d) The Director may terminate an Event or order a Licensee to close an Event if the Licensee does not use and occupy the Premises for the purpose described in the Agreement.

(e) The Director may terminate this Agreement as provided elsewhere in this Agreement.

If the City terminates this Agreement, then the Licensee shall owe the City a percentage of the License Fee for each definite date that the Director is unable to resell. The Licensee shall also issue refunds for all Tickets sold.

**16. NON-WAIVER.** Failure of the City to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law, or failure of the City to notify the Licensee properly in the event of default, or the acceptance of payment or other performance shall not release the Licensee from any or all of its obligations under this Agreement, and shall not be deemed a waiver of any right of the City to insist on strict performance hereof or any of its rights or remedies as to prior or subsequent default hereunder.

#### **17. LAWS, PERMITS/LICENSES, FIRE AND TAXES.**

(a) **Laws.** The Licensee shall strictly comply with all applicable laws, rules and regulations including applicable provisions of the City's Code of Ordinances, Building Code and Fire Code, as those codes may be amended from time to time as well as the rules and regulations promulgated by the Director, which are all specifically incorporated in this Agreement by reference. This Agreement shall be construed in accordance with the laws of the State of Texas and is to be performed in Harris County, Texas.

(b) **Permits.** Licensee shall comply with and acquire any and all applicable federal, state and/or municipal permits or licenses for doing business within the State of Texas and City of Houston including, but not limited to, health permits, pyrotechnics, music licensing and fire inspection.

(c) **Taxes.** Licensee shall pay all taxes of whatever nature becoming due by reason of its use of the Facility.

**18. NOTICES.** All notices required or permitted hereunder shall be in writing (unless another medium is expressly authorized herein) and shall be deemed delivered when actually received or, if not actually received, three (3) days after deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) and addressed to the respective other party at the address set out in the Agreement, or such other address as the receiving party may have designated by notice to the other party.

**19. SURVIVAL.** Notwithstanding the City's acceptance of the License Fee and the expiration of the License Period, the Licensee shall remain obligated to the City under all clauses of this Agreement that expressly or by implication survive such acceptance and the expiration of the License Period.

**20. ASSIGNMENT OF OCCUPANCY OF PREMISES.** The Licensee shall not assign its right to occupy the Premises without the consent of the Director.

**21. ENFORCEMENT.** The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. Licensee covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Licensee's compliance with this Agreement, with the exception of those documents made confidential by federal or state law or regulation.

**22. AMERICANS WITH DISABILITIES ACT.** Licensee is responsible for non-permanent accessibility requirements such as, but not limited to, seating accessibility. **LICENSEE INDEMNIFIES THE CITY FOR ANY AND ALL CLAIMS AND LIABILITIES ARISING OUT OF LICENSEE'S SATISFACTION OF SAME REQUIREMENTS.**

For Licensees of the Wortham Theater, which consists of two theaters, the Brown Theater, which is the large theater, and the Cullen Theater, which is the small theater, and the common area which includes the main entry doors to the Wortham Theater ticket counters, elevators, and concession stands, the Licensee hereby agrees to the following, in compliance with the Americans with Disabilities Act, The Rehabilitation Act, Chapter 121 of the Texas Human Resources Code, and the Texas Architectural Barriers Act, TEX. REV. CIV. ANN. ART. 9102:

1. Brown Theater

- (a) To reserve for each show one wheelchair seat and one companion seat in the Brown Theater, at a location of Licensee's choosing, for emergency or last minute use by patrons with disabilities in the Brown Theater.
- (b) To provide wheelchair seats with companion seats in the Grand Tier level at the same price as the seats on the Orchestra level, if the patron with a disability cannot access the seats on the Orchestra level.

2. Cullen Theater

- (a) To reserve for each show one wheelchair seat and one companion seat in the Cullen Theater, at a location of Licensee's choosing, for emergency or last minute use by patrons with disabilities in the Cullen Theater.
- (b) To provide wheelchair seats with companion seats in the Mezzanine level at the same price as the seats on the Orchestra level, if the patron with a disability cannot access the seats on the Orchestra level.

3. Common Area

- (a) To provide assistance for patrons with disabilities with purchasing tickets one hour prior to the performance on performance day.
- (b) To provide assistance for patrons with disabilities entering and exiting the different levels of the theater where the performance will occur.
- (c) City's food and beverage services contractor is to provide concessions for patrons with disabilities by going to the patron and his or her companion and taking their order as well as bringing the order to the patron and his or her companion.

For Licensees of Jones Hall, which includes the theater and the common area, including the main entry doors to the ticket counters, elevators, and concession stands, the Licensee hereby agrees to comply with the Americans with Disabilities Act, The Rehabilitation Act, Chapter 121 of the Texas Human Resources Code, and the Texas Architectural Barriers Act, TEX. REV. CIV. ANN. ART. 9102.

**23. CONCEALED HANDGUNS.** Possession of firearms is forbidden in the Facility with the exception of the following: (i) licensed law enforcement officers; (ii) licensed honorably retired peace officers; and (iii) if they are used on stage as part of a production but, under no circumstances, may they be used with live ammunition.